

7 FAM 1220

DEVELOPING A LOSS-OF-NATIONALITY CASE

(CT:CON-550; 12-12-2014)
(Office of Origin: CA/OCS/L)

7 FAM 1221 INTRODUCTION

(CT:CON-527; 08-26-2014)

- a. Domestic passport agencies and centers should not attempt to develop a loss-of-nationality case in light of the Immigration and Nationality Act (INA) 351(a) (8 U.S.C. 1483) restrictions on loss of nationality.

NOTE: INA 351(a) (8 U.S.C. 1483(a)) provides that except as provided in paragraphs (6) and (7) of INA 349(a) of this title, "no national of the United States can lose United States Nationality while within the United States and any of its outlying possessions, but loss of nationality shall result from the performance within the United States or any of its outlying possessions of any of the acts or fulfillment of any of the conditions specified in Chapter 3 of the INA when the national thereafter takes up a residence outside the United States and its outlying possessions."

- b. The U.S. Supreme Court (*Vance v. Terrazas*, 444 U.S. 252 (1980)) has stated that a person cannot lose U.S. nationality unless he or she voluntarily and intentionally relinquishes that status. In analyzing a possible loss-of-nationality case, ask the following questions, in this order:
- (1) Was the person a U.S. citizen at the time of the potentially expatriating act?
 - (2) Did the person perform an act which the relevant U.S. statute defines as a potential basis for expatriation?
 - (3) Was the act performed "voluntarily," i.e., as a product of the individual's free will (free of the undue influence of another) with an understanding of the nature of the act and a good general knowledge of its consequences? While difficult choices generally do not rise to the level of duress, in situations of genuine economic or other duress where there is no alternative course of action, voluntariness might be negated.

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NOTE: Economic duress involves the genuine inability of an individual to make a living for him/herself and/or for his/her family, or subsist in a foreign country, by any means, due to U.S. nationality. It does not mean the inability to secure foreign government employment, or indebtedness due to mortgage or loan obligations or difficulty opening or maintaining a bank account. An individual who alleges economic duress as the basis for the commission of the expatriating act must also show that his/her personal circumstances abroad made it unreasonable for him/her to return to the United States to provide support for him/herself or for his/her family.

- (4) Was the act performed with the intention (though not necessarily the motive or desire) to relinquish U.S. citizenship?

NOTE: For most potentially expatriating acts, the Department has adopted an administrative presumption that a person intends to retain U.S. citizenship when he or she commits a potentially expatriating act, unless he or she asserts the contrary. See 7 FAM 1222 and 22 CFR 50.40.

- c. Unless all four of the above questions can be answered YES, loss of nationality has not occurred. Thus, if a question must be answered NO there is no need, or purpose, served by even asking the next question.

NOTE: In *Vance v. Terrazas*, the U.S. Supreme Court recognized that intent can be expressed "in words or found as a fair inference from conduct." Because the Department has an administrative presumption that a person intends to retain U.S. citizenship in committing the acts described in 7 FAM 1222, paragraph a, the Department generally does not consider conduct in such cases. However, U.S. citizens are increasingly asserting that their performance of a potentially expatriating act covered by the administrative presumption was performed with the intention of relinquishing citizenship. 7 FAM 1224 provides guidance regarding consideration of conduct in assessing such cases. 7 FAM 1270 and 7 FAM 1280 provide guidance regarding consideration of conduct in assessing intent in INA 349(a)(3) and INA 349(a)(4) cases involving service in the armed forces of a foreign state engaged in hostilities against the United States and taking up a high-level policy position in a foreign government.

- d. A potential loss-of-nationality case or previously approved loss case may also come to the attention of a consular officer abroad or passport specialist at a domestic passport agency or center in the course of adjudicating a passport

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application. 7 FAM 1223 provides guidance about how to proceed in such cases.

- e. 7 FAM Exhibit 1221 includes a flow chart summarizing procedures to be followed in loss-of-nationality cases.

7 FAM 1222 ADMINISTRATIVE PRESUMPTION

(CT:CON-527; 08-26-2014)

- a. In light of the U.S. Supreme Court decisions in *Vance v. Terrazas* (1980) and *Afroyim v. Rusk* (1967) (summarized in 7 FAM 1200 Appendix B), in order to expedite the resolution of cases, in 1990 the Department adopted the administrative presumption found in 22 CFR 50.40 that a U.S. citizen/noncitizen national intends to retain U.S. nationality when he or she commits certain expatriating acts. That administrative presumption is in the process of being revised in 22 CFR Part 50, and includes when a U.S. citizen:
 - (1) Is naturalized in a foreign state (INA 349(a)(1)); or
 - (2) Takes an oath of allegiance to a foreign state (INA 349(a)(2)); or
 - (3) Serves in the armed services of a foreign state as a commissioned or noncommissioned officer of a foreign state, not engaged in hostilities against the United States (INA 349(a)(3)); or
 - (4) Accepts nonpolicy-level employment with a foreign government and is either a dual national of the state of employment or has taken an oath or affirmation of allegiance in connection with the position (INA 349(a)(4)).
- b. Unless such a person affirmatively, explicitly, and unequivocally asserts that one of the above acts was performed with an intent to relinquish U.S. nationality or the person has engaged in other conduct which is inconsistent with retention of U.S. citizenship (see 7 FAM 1270 and 7 FAM 1280), he or she will retain U.S. nationality. Authority was delegated to consular officers abroad in 1990 to process findings in cases described in 7 FAM 1222, paragraph a, without referral to the Department. 7 FAM 1223 provides guidance on procedures consular officers should follow in such cases. No such authority has been given to the passport agencies or centers in these cases.
- c. When a person affirmatively, explicitly and unequivocally asserts that one of the above acts in 7 FAM 1222, paragraph a(1)-(4), was performed with an intent to relinquish U.S. nationality, the administrative presumption is (or becomes) inapplicable. The consular officer is required to fully develop the case, following the guidelines and procedures outlined in 7 FAM 1224, in order to assess the individual's voluntariness and intent. Additionally, expanded departmental review in appropriate cases appears prudent. Just as U.S. citizens are entitled to an administrative review in instances in which the Department has approved a CLN, 7 FAM 1224.6 (c), (d), and (e) now provide

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an institutionalized review process available to a citizen when a post declines to put forward a case of loss of citizenship. Since the courts and statutes have long held that expatriation is a right of U.S. citizenship, such a departmental review would advance the goals of fundamental fairness and due process.

- d. Additionally, posts and CA/OCS have been seeing an increasing number of such cases, possibly due to perceptions of the U.S. citizen (which may or may not be accurate) regarding the tax consequences, cost, or visa inadmissibility consequences, of relinquishment of citizenship under INA 349(a)(1), (2), (3) or (4) as compared with a renunciation of citizenship under INA 349(a)(5). By way of clarification, though all losses of citizenship under INA 349 involve relinquishment of citizenship, for purposes of this FAM chapter (7 FAM 1200), "renunciation" refers to the expatriating act under INA 349(a)(5) of taking a formal oath of renunciation of citizenship in accordance with law and prescribed procedures, whereas "relinquishment" refers to the expatriating acts specified under INA 349(a) (1), (2), (3), or (4) voluntarily taken with the intent to relinquish citizenship. Additional guidance on substantive factors to consider in assessing voluntariness and intent to relinquish citizenship in such cases, as well as the procedures to be followed by the consular officer and the Department, is provided in 7 FAM 1224.
- e. The presumption stated in 7 FAM 1222, paragraph a, that a person intends to retain U.S. citizenship is not applicable when the individual:
 - (1) Formally renounces U.S. citizenship before a consular officer (INA 349(a)(5)) (7 FAM 1260);
 - (2) Has served or is serving in the armed forces of a foreign state engaged in hostilities against the United States or has served or is serving as a commissioned or noncommissioned officer of a foreign state engaged in hostilities against the United States (INA 349(a)(3)) (7 FAM 1270); or
 - (3) Takes a policy-level position in a foreign state and is either a dual national of the state of employment or has taken an oath or affirmation of allegiance in connection with the position (INA 349(a)(4) (7 FAM 1280);
 - (4) Is convicted of treason (INA 349(a)(7)).

NOTE: The service must be in the armed forces of a foreign state and not with a non-state force such as a terrorist organization or insurgent militia fighting a foreign state.

- f. The cases described in 7 FAM 1222, paragraph c, must be developed and evaluated carefully by the consular officer, CA/OCS/ACS, and CA/OCS/L to ascertain the individual's intent with respect to U.S. citizenship.
- g. The considerations stated in 7 FAM 1222, paragraph a, and 7 FAM 1222, paragraph c, apply not only to current and future cases, but are also applicable to past cases when persons ask for administrative review of earlier findings of

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loss of nationality (see 7 FAM 1230) or the cases otherwise come to our attention, for example in the context of a passport application. Many of the cases CA/OCS/L receives involve reconsideration of cases decided under earlier, now inapplicable standards. Administrative reviews of previous findings of loss of nationality are conducted by CA/OCS/L, in accordance with 7 FAM 1230. Posts abroad, passport agencies/centers, and CA/OCS/ACS may not perform administrative reviews of previous findings of loss. The only exception to this, as explained in 7 FAM 1233, are cases in which the basis for the finding of loss of nationality has been declared unconstitutional.

- h. A person who retains U.S. citizenship following foreign naturalization becomes a dual national:
 - (1) The individual is responsible for coping with whatever consequences result from having two or more nationalities, and must enter and depart the United States on a U.S. passport (unless the requirement is waived);
 - (2) 7 FAM 080 provides guidance about dual nationality.
- i. A person who loses U.S. nationality and does not possess another nationality or permanent resident status in a foreign country may experience difficulties remaining abroad. 7 FAM 1215 provides guidance about statelessness.

7 FAM 1223 CONSULAR ACTION IN ADMINISTRATIVE PRESUMPTION OF INTENT TO RETAIN CITIZENSHIP CASES

(CT:CON-532; 09-19-2014)

- a. A potential loss-of-nationality case that comes within the administrative presumption outlined in 7 FAM 1222, paragraph a, requires you to take the following actions:
 - (1) Clear the name in the Consular Lookout and Support System (CLASS);
 - (2) If a CLASS Reason Code "Q" Questionable Claim to U.S. Citizenship exists, there is an administrative presumption that the person did not intend to relinquish U.S. citizenship by committing the acts specified in 7 FAM 1222, paragraph a;

CLASS Reason Code "Q"

Q – Claim to U.S. citizenship questionable because available evidence raises possibility that subject did not acquire citizenship or has lost citizenship. (Applicant's identity has been reasonably established and fraud is not suspected.)

Sub-Codes: The resolution of the problem requires:

109. Applicable section of law—possible loss of citizenship

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- (3) The consular officer should apply the administrative presumption, and complete 7 FAM Exhibit 1223 (consular officer attestation of non-loss):
- (a) If the case came to your attention in the context of a passport application, the completed 7 FAM Exhibit 1223 and any statement provided by the applicant regarding his or her intentions in performing such acts should be attached to the passport application so that it can become a permanent part of the passport record for the individual;

NOTE: Form DS-11, Application for a U.S. Passport, includes a sentence before the applicant's signature that "I declared under penalty of perjury that ... I have not since acquiring U.S. citizenship performed any of the acts listed under "Acts and Conditions" on this application form (unless explanatory statement is attached)." Any supplemental statement provided by the applicant should address whether he or she intended to relinquish U.S. nationality in performing such an act.

- (b) If the case did not come to your attention in the context of a passport application, you should complete a Form DS-4085, Request for Additional Visa Pages (this form is in the process of being retitled Request for Additional Visa Pages and Miscellaneous Passport Services). Attach the completed 7 FAM Exhibit 1223 to Form DS-4085 so that it can become part of the passport record for the individual. Be sure to complete the part of the form regarding the individual's previous passport number, which you can obtain either by examining the person's previous passport or from the Passport Issuance Electronic Records System (PIERS);
- (c) The passport application and consular certification (7 FAM Exhibit 1223) should be sent to Passport Services for scanning and filing together with the passport application. This should be sent to:

U.S. Department of State
Record Services Division
CA/PPT/S/TO/RS
44132 Mercure Circle [DHL/FedEx/UPS]
PO Box 1213 [USPS]
Sterling, VA 20166-1213

Posts abroad should continue to send the above documentation to CA/PPT via diplomatic pouch, as appropriate.

- (4) The existing CLASS reason code "Q" lookout should be removed from the

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CLASS system using the Passport Lookout Tracking System (PLOTS):

- (a) Designated passport specialists at domestic passport agencies and centers are authorized to take this action;
 - (b) Posts abroad should request that CA/OCS/ACS remove the CLASS reason code "Q" lookout from the CLASS system using PLOTS.
- b. If the CLASS name check results in a CLASS reason code "L" hit for loss of nationality, the passport application should be denied due to noncitizenship. The applicant should be provided with Information Request Letter (IRL) 1095 which directs the applicant to contact CA/OCS/L to request administrative review of a previous finding of loss of nationality (7 FAM 1230). 7 FAM 1300 Appendix T provides guidance about IRLs.

7 FAM 1224 RELINQUISHMENT CASES: CONSULAR AND DEPARTMENTAL ACTION IF THE INDIVIDUAL ASSERTS AN INTENTION TO RELINQUISH U.S. CITIZENSHIP CONTRARY TO THE ADMINISTRATIVE PRESUMPTION

7 FAM 1224.1 Is the Person a U.S. Citizen?

(CT:CON-527; 08-26-2014)

- a. You should first determine whether the individual was a U.S. citizen/noncitizen national at the time of the alleged act of expatriation. This may include:
 - (1) Asking the person to present his or her U.S. passport, Form FS-240, Consular Report of a Birth Abroad of a Citizen of the United States of America, Naturalization Certificate, Certificate of Citizenship, or U.S. birth certificate; or
 - (2) Reviewing the Passport Issuance Electronic Records System (PIERS).
- b. Clear the name in the Consular Lookout and Support System (CLASS).
- c. Review the American Citizen Services (ACS) system and PLOTS for any previous case history.

7 FAM 1224.2 Was the Act Potentially Expatriating?

(CT:CON-527; 08-26-2014)

Analyze whether a potentially expatriating act was committed. 8 U.S.C. 1481 (INA 349) and the predecessor statutes (the Nationality Act of 1940 and the Revised Statutes) define which acts are potentially expatriating under U.S. law. For additional guidance, consular officers should refer to 7 FAM 1250 (naturalization

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and foreign oath), 1270 (foreign military service) and 1280 (foreign government employment). When in doubt, consult CA/OCS/L (Ask-OCS-L@state.gov).

7 FAM 1224.3 Consular Letter and Questionnaire

(CT:CON-527; 08-26-2014)

- a. If the consular officer determines the person was a U.S. citizen/noncitizen national at the time of the alleged act and that the act was potentially expatriating, you need to inquire about the voluntariness of the act and the individual's intention regarding his or her U.S. citizenship in committing the act. To do this you need to send a letter (see 7 FAM Exhibit 1224):
 - (1) Providing the individual with a copy of applicable U.S. Department of State brochures, which are also available on the CA Internet page, including Advice About Possible Loss of U.S. Citizenship and Dual Nationality;
 - (2) Asking the person to fill out Form DS-4079, Questionnaire: Information for Determining Possible Loss of U.S. Citizenship, and to submit this form and any additional documents in the return envelope provided that pertain to the voluntariness of the potential act of expatriation and the person's intent with respect to the retention of U.S. citizenship at the time of the commission of the act.
- b. Consular officers should send the letter by registered mail, if that service is available; if not, use a similar secure method.

7 FAM 1224.4 Developing the Record

(CT:CON-532; 09-19-2014)

- a. There is an administrative presumption that an individual intends to retain U.S. citizenship when he or she commits the potentially expatriating acts enumerated in 7 FAM 1222, paragraph a.
- b. When an individual who commits a potentially expatriating act enumerated in 7 FAM 1222, paragraph a, states that his or her intent was to relinquish citizenship, the administrative presumption becomes inapplicable.
- c. INA section 349(b) places the burden of establishing loss of citizenship "upon the person or party claiming that such loss occurred," in this case the applicant asserting an intent to relinquish citizenship when committing the potentially expatriating act enumerated in 7 FAM 1222, paragraph a.
- d. Under the INA the standard of proof is a preponderance of the evidence; that is, it is more likely than not that the individual intended to relinquish citizenship.
- e. INA section 349(b) also provides that any person who commits a potentially expatriating act is presumed to have done so voluntarily, but such presumption of voluntariness of the act may be rebutted upon a showing, by a

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preponderance of the evidence, that the act was not performed voluntarily.

See 7 FAM 1200 Appendix F for further guidance on developing the record.

NOTE: In developing a case, the consular officer should bear in mind the following. INA Section 349, Note 1 is entitled "Right of Expatriation" and reads as follows: "Whereas the right of expatriation is a natural and inherent right of all people, indispensable to the enjoyment of the rights of life, liberty, and the pursuit of happiness; and whereas in the recognition of this principle this Government has freely received emigrants from all nations, and invested them with the rights of citizenship;...Therefore any declaration, instruction, opinion, order or decision of any officer of the United States which denies, restricts, impairs, or questions the right of expatriation, is declared inconsistent with the fundamental principles of the Republic."

7 FAM 1224.5 Interview

(CT:CON-527; 08-26-2014)

After you receive the questionnaire and any additional documents, it may be necessary to contact the person to discuss next steps and clarify any issues that arise in reviewing the responses to Form DS-4079, Questionnaire: Information for Determining Possible Loss of U.S. Citizenship, such as contradictory statements. Consular officers can be flexible in determining whether this should include an in person, telephone or e-mail contact, or to request additional documentation. Doubt as to voluntariness or intent must be resolved. This applies to any case not coming within the scope of the administrative presumption enumerated in 7 FAM 1222, paragraph a, including any case in which the administrative presumption becomes inapplicable by virtue of the claim of intent to relinquish citizenship made by the individual.

7 FAM 1224.6 Coordination with the Department

(CT:CON-532; 09-19-2014)

- a. When an applicant who has committed an act specified in 7 FAM 1222, paragraph a, firmly asserts an intent to relinquish citizenship which the consular officer does not find credible or which is contradicted by the evidence, the consular officer should consult on the matter with CA/OCS/ACS and CA/OCS/L prior to a final disposition of the case, providing a full copy of the administrative record to both offices. The consular officer should provide a recommendation for disposition to CA/OCS/ACS and to CA/OCS/L. The recommendation should provide as much detail as possible about the applicant's factual circumstances relevant to the relinquishment, including a discussion of any of the relevant factors to intent or voluntariness set forth in 7 FAM 1224.4 and 7 FAM 1200 Appendix F. The consular officer should in particular address the situation in which actions contradict, refute, or impeach statements of relinquishment and whether or not the actions speak louder than words, and why. The ACS country

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officer should bring the case to the attention of the ACS Regional Division Chief in appropriate cases. If appropriate, CA/OCS/L may wish to consult with the Office of the Legal Adviser for Consular Affairs (L/CA). While in many or most cases CA/OCS/ACS and CA/OCS/L will agree with the recommendation of the consular officer, departmental coordination and review serve the goals of reasoned decision-making, consistently applied standards of adjudication, and uniform decision making to the greatest extent possible.

- b. It is important that meticulous records be maintained of actions taken by the Department (CA and posts abroad) in these cases. As noted above, any previous case record should be retrieved by the consular officer from PLOTS and the Passport Issuance Electronic Records System (PIERS), and any other record systems as appropriate.
- c. When the applicant persists in asserting loss of nationality even though the consular officer does not believe that the applicant has met the statutory burden of proof, the consular officer may, in appropriate cases, choose, for purposes of seeking a review, to treat the case as if it were a loss of nationality case and prepare the necessary paperwork and perform the required procedures for a proposed Certificate of Loss of Nationality. The consular officer should forward the draft CLN and full case record to the Department with the consular officer's recommendation and accompanying explanation as to why the consular officer believes that the burden of proof has not been met.
- d. The CA/OCS/ACS country officer and CA/OCS/L should complete the administrative review and prepare a decision or recommendation on the case, as appropriate (see 7 FAM 1224.6(e)), within 30 days of receipt of the record from post, or provide written notice to the post, requester or requester's attorney that additional time will be required. Like the consular officer's recommendation, the CA/OCS/ASC and CA/OCS/L decision or recommendation should provide as much detail as possible about the applicant's factual circumstances relevant to the relinquishment, including a discussion of any of the relevant factors to intent or voluntariness set forth in 7 FAM 1224.4 and 7 FAM 1200 Appendix F.
- e. In appropriate cases CA/OCS/ACS and CA/OCS/L should seek guidance from L/CA and the OCS Managing Director. In particularly complex cases the OCS Managing Director will make the final decision, in consultation with CA/OCS/ACS, CA/OCS/L, L/CA and post.

7 FAM 1225 VOLUNTARINESS AND INTENT

7 FAM 1225.1 Was the Act Performed Voluntarily?

(CT:CON-527; 08-26-2014)

- a. Analyze whether the potentially expatriating act was performed voluntarily.

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- b. Most individuals who commit expatriating acts do so voluntarily. There is a statutory presumption (8 U.S.C. 1481(b); INA 349(b)) that the individual's act was voluntary. The presumption may, however, be overcome by evidence that it was more likely than not that that act was not voluntary.
- c. An expatriating act is not voluntary if the individual was coerced or compelled to commit the expatriating act. The consular officer should consider whether there are facts and circumstances that make it more likely than not that the individual was not acting out of his own free will. The fact that an individual expatriated herself or himself reluctantly, or had to choose between expatriation and another unpalatable alternative, does not in and of itself mean that the act was not voluntary. The critical question is whether the individual was free to choose between alternatives available to him or her, even if the choices might be difficult. (See 7 FAM 1260 regarding reluctant renunciation.)
- d. Special problems relating to formal renunciation of U.S. citizenship: There is rarely a question of intent in renunciation cases, as the oath of renunciation itself is strong proof of intent. Issues of voluntariness, however, may arise. Minors may be subject to the undue influence of others, such as parents. You should also give careful scrutiny to renunciations by persons in prison or in other circumstances where a degree of compulsion may be present. Finally, some would-be renunciants may appear to suffer from mental or emotional problems or conditions that cast doubt on the voluntariness of their actions (see 7 FAM 1290) as well as their intent with respect to their relinquishment of their U.S. citizenship.

7 FAM 1225.2 Did the Individual Intend to Lose U.S. Citizenship?

(CT:CON-527; 08-26-2014)

- a. You need to analyze whether the individual performed the expatriating act with the intention of giving up the rights and privileges of U.S. citizenship. "Intent" has been defined as the "will" to surrender citizenship, as the Supreme Court noted in *Vance v. Terrazas*, 444 U.S. 252 (1980), or the "conscious purpose" to surrender citizenship, as the Court noted in *Kahane v. Schultz*, 653 F. Supp. 1286, 1493 n.7 (E.D.N.Y. 1987). Although an individual's intent at any given time may be difficult to ascertain, it is incumbent upon the Department, pursuant to Supreme Court jurisprudence under the Constitution, to determine intent at the time of the commission of the statutory act of expatriation.
- b. To evaluate intent, look at the potentially expatriating act, what the person said regarding intent, and other actions relevant to intent.
 - (1) The individual's statements contemporaneous with the expatriating act are of particular importance. One court has expressed the view that "the statement 'I wish to remain a citizen' cannot be a lie". *Kahane v. Schultz*, 653 F. Supp. 1286, 1493 n.7 (E.D.N.Y. 1987).

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- (2) In most cases one act, standing alone, does not reveal intent. Rather intent is to be determined by looking at the totality of the circumstances, while applying the preponderance of the evidence standard. Put another way, do the totality of the circumstances demonstrate that it was more likely than not that the individual intended to relinquish citizenship at the time of the expatriating act?
 - (3) The Supreme Court has rejected the argument that acts such as a foreign oath renouncing all other nationalities are so inconsistent with retention of citizenship that they bespeak intent to lose nationality. The Supreme Court jurisprudence makes clear that there is no such thing as a 'presumption of relinquishment.'
 - (4) Motive should not be confused with intent. The Department concerns itself with intent, not motive. A desire to remain a citizen or surrender citizenship for cynical or hypocritical reasons is not our concern. Our focus must be "intention", that is the citizen's "will" or "conscious purpose" whether to remain a citizen.
- c. Although the relevant intent is the person's intent at the time the expatriating act was committed, actions taken before or after the expatriating act may help in assessing what the person's intent was, or may cast doubt on the person's stated intent.
 - d. See special instructions about renunciation and intent in 7 FAM 1260.
 - e. The expatriating acts enumerated below in subparagraphs e(1) and e(2), of this section do not enjoy an administrative presumption of retention of citizenship. The Department or the individual must satisfy their burden of proving that loss occurred by a preponderance of the evidence. Those acts include:
 - (1) Having served or serving in the armed forces of a foreign state engaged in hostilities against the United States (INA 349(a)(3)) (see 7 FAM 1270); or
 - (2) Taking up a policy-level position in a foreign state and the individual is either a dual national of the state of employment or has taken an oath or affirmation of allegiance in connection with the position (INA 349(a)(4)) (see 7 FAM 1280).

7 FAM 1226 PREPARE CONSULAR OFFICER OPINION MEMO FOR RELINQUISHMENTS

(CT:CON-532; 09-19-2014)

- a. Summary: One of the most important elements of your development of a loss-of-nationality case is the consular officer's opinion.
- b. In a relinquishment case in which the administrative presumption of retention is not applicable, you should prepare a thorough, thoughtful opinion that includes all information you have about the individual's demeanor, state of mind, and

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composure, the potentially expatriating act, and the issues of voluntariness, and intent. See 7 FAM 1224.4 and 7 FAM 1200 Appendix F. All relevant documentation, including Form DS-4079, Questionnaire: Information for Determining Possible Loss of U.S. Citizenship, the statement of understanding, and in a renunciation case, the oath of renunciation should be attached. A sample consular opinion is in 7 FAM Exhibit 1226.

- c. Cases where the individual claims intent to lose U.S. nationality, especially where the expatriating act is renunciation, are generally straightforward. An exception to this are persons who claim a desire to renounce U.S. citizenship, but also claim they do not want to lose all rights and privileges of U.S. nationality. See renunciation of U.S. citizenship by persons claiming a right of residence in the United States. The intention to relinquish U.S. nationality required for purposes of finding loss of nationality does not exist in cases where a renunciant plans or claims a right to continue to reside in the United States unless the renunciant demonstrates that residence will be as an alien documented properly under U.S. law (see 7 FAM 1260).
- d. The consular officer needs to provide as much detail as possible about certain potentially expatriating acts. For example, in the case of a person accepting a policy-level position with a foreign government, CA/OCS/ACS and CA/OCS/L need to review the nature of the duties, any statements made by the individual with respect to his or her intent towards U.S. citizenship, etc.
- e. The Department should maintain a record of the consular officer's opinion as well as the final disposition letter to the individual granting or denying the CLN.

7 FAM 1227 PREPARE CERTIFICATE OF LOSS OF NATIONALITY FOR RELINQUISHMENT CASES

(CT:CON-550; 12-12-2014)

- a. If you have reason to believe that the individual has committed an expatriating act voluntarily with the intention of relinquishing U.S. nationality, prepare a Form DS-4083, Certificate of Loss of Nationality of the United States (CLN). Prepare also the following forms, and enter the Loss of Nationality Service in the ACS case management system. Scan the forms below as a single PDF and attach it to the Loss of Nationality Service associated with the individual. Post should note its recommended disposition of the case in ACS and transfer the case record to CA/OCS/ACS and alert your CA/OCS/ACS country officer via email that the case has been transferred.
 - (1) The consular officer opinion, which should also cite the evidence of the individual's U.S. citizenship and whether the person possesses another nationality; and
 - (2) Form DS-4083, Certificate of Loss of Nationality of the United States;

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- (3) Form DS-4079, Questionnaire: Information for Determining Possible Loss of U.S. Citizenship;
- (4) Form DS-4081, Statement of Understanding Concerning the Consequences and Ramifications of Relinquishment or Renunciation of U.S. Citizenship;

NOTE: This is a new requirement; use Form DS-4081 for all loss-of-nationality cases where there is intent to relinquish U.S. citizenship. If an individual declines to execute Form DS-4081, or the consular officer neglects to obtain it; that does not invalidate the loss of nationality.

- (5) Proof that the individual committed an expatriating act;
 - (6) Any additional written statement or evidence provided by the individual. And if applicable the subject's Naturalization Certificate.
- b. 7 FAM 1260 provides special instructions regarding renunciation cases which will also require you to prepare and scan the following additional documents to CA/OCS/ACS:
- (1) Form DS-4083, Certificate of Loss of Nationality of the United States;
 - (2) Form DS-4080, Oath of Renunciation of the Nationality of the United States;
 - (3) Form DS-4081 - Statement of Understanding Concerning the Consequences and Ramifications of Relinquishment or Renunciation of U.S. Citizenship; and
 - (4) [May also require] Form DS-4082, Witnesses' Attestation Renunciation/Relinquishment of Citizenship, to be used only when the person relinquishing or renouncing citizenship does not speak English.
- c. You should prepare two (2) copies of the entire relinquishment or renunciation package with original signatures and seals. Both copies of the entire package must contain the consular officer's signature, the individual's signature, the appropriate raised seal, and no typographical errors. (See checklist in 7 FAM Exhibit 1227 A and B.)

As explained in 7 FAM 1240, copies of approved CLNs are distributed to:

Department of State Citizenship Files (CA/PPT)
The expatriate (via the U.S. embassy or consulate)
DHS/USCIS
IRS
FBI

Denied CLNs, supporting evidence and the denial letter should be sent to the following address for filing, under cover of a Form DS-4085. *Posts must use the following mailing address, including the*

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physical address, P.O. box, and the nine-digit zip code:

U.S. Department of State
Record Services Division
CA/PPT/S/TO/RS
44132 Mercure Circle
P.O. Box 1213
Sterling, VA 20166-1213

- d. In addition, in cases involving renunciation or relinquishment by a person making threatening statements against the United States, the President, or other high-level officials, a copy is provided by CA/OCS/L to the U.S. Secret Service in accordance with Warren Commission recommendations (see 7 FAM 1245).
- e. Status of the U.S. passport pending approval of the CLN:
 - (1) 7 FAM 1229 provides guidance on disposition of citizenship-related documentation;
 - (2) The post should obtain the person's U.S. passport when the individual executes either Form DS-4080, Oath of Renunciation of the Nationality of the United States, or the statement of voluntary relinquishment portion of Form DS-4079, Questionnaire: Information for Determining Possible Loss of U.S. Citizenship;
 - (3) The post should not cancel the U.S. passport, but rather retain the passport in a secure location until the approved CLN is received back from CA/OCS/ACS;
 - (4) If the intended expatriate advises the post that he or she needs the U.S. passport immediately because it contains valid foreign visas, the post may cancel the book by punching two holes in the front cover of the passport. Use a "CANCELLED" stamp on the Secretary's message page. Do not damage the entry/exit or visa stamp or foreign visas;
 - (5) When the approved CLN is received, the post should cancel the passport. The canceled passport may be returned to the expatriate upon request. If the expatriate does not desire the canceled passport the post may locally destroy non e-passports. Canceled e-passports should be sent to the Bureau of Consular Affairs, Executive Office, General Services Division (CA/EX/GSD) (under cover of a memo) at the following address:

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U.S. Department of State
Consular Supply Facility
(CA/EX/GSD)
SA-21
Washington, DC 20522-2101

CA/EX/GSD will forward the cancelled e-passports to the Government Printing Office (GPO) for destruction in accordance with 7 FAM 1366, as posts' shredders cannot destroy e-passports;

- (6) If the CLN is disapproved, but the passport was cancelled and returned to the applicant for use of the foreign visa, the applicant may apply for a new passport for which the requisite fees may be charged. 7 FAM 1300 Appendix G provides guidance about circumstances when passports may be issued without charging fees.

7 FAM 1228 ANALYSIS OF POTENTIAL LOSS-OF-NATIONALITY CASE BY CA/OCS/ACS AND RELATED ACTION

7 FAM 1228.1 Receipt of Loss-of-Nationality Case in CA/OCS/ACS from Post

(CT:CON-527; 08-26-2014)

- a. When the consular officer transmits a potential loss-of-nationality case to CA/OCS/ACS, through the ACS computer application, the case is distributed to the appropriate geographic division and immediately logged into the ACS system and assigned to a case officer.
- b. CA/OCS/ACS should usually complete action on an original finding of loss-of-nationality case within 30 days of receipt. If a delay is anticipated, the post will be notified.
- c. In rare cases, the individual requires an expedited decision; for example, a person running for office in a foreign state who must prove that he or she has lost U.S. citizenship. CA/OCS can accommodate such requests.

Note: On occasion posts and the Department still see cases pursuant to the now repealed INA Section 301(b) concerning the retention requirement or a request for a CLN pursuant to the now repealed INA Section 350 concerning dual nationals and the receipt of a benefit from a foreign country of nationality. On occasion posts may also see requests for a CLN issued pursuant to the now repealed Nationality Act section 401(a) and the now repealed part of INA section

349(a)(1) extant prior to November 14, 1986, regarding derivative foreign naturalization through the parent. The consular officer is advised to consult with CA/OCS/L in such cases, with copies of the request for advice sent to CA/OCS/ACS.

7 FAM 1228.2 Loss-of-Nationality Case When the Would-Be Expatriate Recants the Decision

(CT:CON-550; 12-12-2014)

- a. If the would-be expatriate notifies the consular officer of a change of heart after signing, the:
- (1) Statement of Voluntary Relinquishment on Form DS-4079, Questionnaire: Information for Determining Possible Loss of U.S. Citizenship; or
 - (2) Form DS-4080, Oath of Renunciation of the Nationality of the United States; and
 - (3) Form DS-4081, Statement of Understanding Concerning the Consequences and Ramifications of Relinquishment or Renunciation of U.S. Citizenship.

But before the consular officer transmits the package to CA/OCS/ACS for approval, the post should obtain a written statement from the individual explaining his or her intentions and explanation of the reversal of the previous decision. The case would then be noted as withdrawn. No finding of loss of nationality will be made.

The withdrawn CLN and supporting evidence and citizen's recant of the previous statement of intent should be sent to the following address for filing, under cover of a Form DS-4085. *Posts must use the following mailing address, including the physical address, P.O. box, and the nine-digit zip code:*

U.S. Department of State
Record Services Division
CA/PPT/S/TO/RS
44132 Mercure Circle
P.O. Box 1213
Sterling, VA 20166-1213

- b. If the case has already been sent to CA/OCS/ACS for decision, but not yet approved, the post should obtain the written statement described above from the individual, scan it in the ACS system and transmit it to CA/OCS/ACS,

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alerting that office by e-mail to the change of heart by the applicant. CA/OCS/ACS will not make a finding of loss of nationality in such a case. The explanatory statement will be annexed to the loss-of-nationality package, which will be sent to Passport Services for filing under cover of an explanatory memo.

- c. If the CLN has already been approved, the post should direct the individual to CA/OCS/L in accordance with 7 FAM 1230 to request administrative review of the previous finding of loss of nationality.

7 FAM 1228.3 Review of CLN Package for Documentary Requirements

(CT:CON-532; 09-19-2014)

- a. The CA/OCS/ACS officer will print the scanned documents from the ACS computer application and review the CLN package to ensure that the basic documentary requirements are met. The scanned documents will serve as working copies for ACS.
- b. The CA/OCS/ACS officer will then analyze the case and determine whether the burden of proof has been met for the Department to make a finding that the individual voluntarily committed an expatriating act with the intention of relinquishing U.S. citizenship.
- c. The case will then be sent to the CA/OCS/ACS geographic division chief for approval or disapproval of the CLN.
- d. See 7 FAM Exhibit 1227 A and B Checklist for review of CLN packet.
- e. The effective date of loss of nationality is the date of the expatriating act, not the date the CLN is approved.

NOTE: The individual should be referred to the IRS for all taxation questions, as the IRS may determine a different, and subsequent, date of loss of nationality for federal taxation purposes.

7 FAM 1228.4 CA/OCS/ACS Finding Regarding Loss of Nationality

(CT:CON-527; 08-26-2014)

- a. If the CLN is approved, CA/OCS/ACS will enter the individual's name in the CLASS name check system as a CLASS reason code "L" lookout reflecting loss of U.S. nationality and delete any CLASS reason code "Q" that may have been entered.

CLASS Reason Code "L" Loss of Citizenship established Subcode
--

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Section of law + date of loss of nationality (date the expatriating act was committed, not the date the CLN was approved)

For example:

INA 349(a)(5) 11/11/2005

- b. If the CLN is approved, the CA/OCS/ACS Division Chief will approve the decision in the ACS system and transfer the automated ACS record back to the post.
- c. Upon receipt of the 2nd original CLN package prepared by post, ACS will complete distribution of the working copies. The second original CLN package will be sent to CA/PPT by CA/OCS/ACS for scanning in the PLOTS system and filing.
- d. CA/OCS/ACS will provide other working copies of the CLN and supporting documents to CA/OCS/L for distribution to the Department of Homeland Security U.S. Citizenship and Immigration Services (DHS/USCIS), the Internal Revenue Service (IRS), Federal Bureau of Investigation (FBI), and when appropriate, to the Secret Service and entry in the CA/OCS/L database. DHS/USCIS must receive a scanned copy of the full CLN, in accordance with 8 U.S.C. 1501. (See 7 FAM 1230 regarding interagency liaison and loss-of-nationality cases.)

7 FAM 1228.5 Notifying Post of Department's Determination

(CT:CON-550; 12-12-2014)

- a. The consular officer should track the approval of the CLN in the ACS system.
- b. If the CLN is not approved, an opinion by CA/OCS/ACS explaining the basis for the Department's decision will be prepared and provided to the post explaining the bases for the conclusions. After the CA/OCS/ACS Division Chief records the denial in the ACS system they will transfer the automated ACS record back to the post. A letter informing the U.S. citizen of the denial of his/her request for a CLN, including reasons for the denial, should be sent to the individual.
- c. Denied CLN packages and supporting evidence including the denial letter should be sent to the following address for filing, under cover of a Form DS-4085.
Posts must use the following mailing address, including the physical address, P.O. box, and the nine-digit zip code:

U.S. Department of State
Record Services Division
CA/PPT/S/TO/RS

44132 Mercure Circle
P.O. Box 1213
Sterling, VA 20166-1213

7 FAM 1228.6 Notifying the Expatriate of the Department's Determination to Approve a CLN

(CT:CON-527; 08-26-2014)

- a. When the CLN case has been approved in the ACS system, the consular officer will take the two original paper copies of the CLN packet, and stamp the upper right corner as "approved" with the date the CLN was approved in the system as the date of reference. Your ACS desk officer can provide you with the details regarding this stamp, which posts will procure locally. Use the date of approval in the system as the date you write on the CLN. Remember the actual date of the loss of U.S. citizenship is the date of the commission of the potentially expatriating act, not the date of approval of the CLN. CLNs will no longer include a signature of the CA/OCS/ACS Division Chief or formally designated alternate.

NOTE: Only a Division Chief in CA/OCS/ACS or formally designated alternate is authorized to approve a Certificate of Loss of Nationality.

- b. If the CLN packet is not handed back in person, the consular officer should notify the individual of the Department's finding via some form of registered/certified mail or express courier service for which a receipt can be obtained and provide the individual with a sealed, signed copy of the CLN packet, including the reverse side with the information on administrative review of findings of loss of nationality.
- c. The receipt should be scanned into the ACS system record and then disposed at post. The service should then be closed in the ACS system.
- d. The second paper copy of the CLN, complete with original seals and signatures should be sent to CA/OCS/ACS at the following address:

CA/OCS/ACS
Office of American Citizen Services and
Crisis Management
Overseas Citizens Services
Bureau of Consular Affairs
U.S. Department of State
SA-17, 10th Floor
Washington, DC 20522-1710

7 FAM 1229 DISPOSITION OF U.S. CITIZENSHIP AND NATIONALITY DOCUMENTS

(CT:CON-550; 12-12-2014)

- a. 7 FAM 1227, *paragraph e*, provides guidance about what the post should do

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with the potential expatriate's U.S. passport until the CLN is approved.

- b. If the person has a passport but has not brought it, you should ask him or her to submit it to you at the earliest opportunity in person or by mail. The Department considers an individual's continued retention/possession of his or her U.S. passport to be incompatible with the expressed intention to terminate U.S. citizenship. If the individual questions your authority, you may cite 22 CFR 51.7 which states that "a passport shall at all times remain the property of the United States Government and shall be returned to the Government upon demand." If the person refuses to surrender the passport, it should be treated as a lost/stolen passport in accordance with 7 FAM 1370 and entered in the Consular Lost and Stolen Passport (CLASP) database.
- c. Consular reports of birth and certifications of birth:
- (1) Because Form FS-240, Consular Report of Birth Abroad of a Citizen of the United States of America, constitutes proof of U.S. citizenship under 22 U.S.C. 2705, the consular officer should request that the expatriate whose PIERS records reflect issuance of a Form FS-240 present that document for annotation;
 - (2) The consular officer should annotate the reverse side of Form FS-240 with an endorsement along the following lines:
- Name, date and place of birth, lost U.S. citizenship on (date of expatriating act, not date of approval of CLN) under INA 349(a) (insert section of law by/insert description of expatriating act). A certificate of loss of U.S. nationality was approved on day/month/year.
- (3) The consular officer should not cancel Form FS-240 since, as evidence of the person's birth abroad, it is still a valid document. However, CA/OCS/ACS will notify CA/PPT/TO/RS/DO/VR that a finding of loss of nationality has been made, and the permanent consular report of birth record in the Department will be annotated accordingly in PIERS and the CCD.
- d. Naturalization certificates and certificates of citizenship:
- (1) The consular officer should ask the individual to relinquish her or his naturalization certificate or certificate of citizenship pending approval of the CLN. If the CLN is approved, CA/OCS/ACS will annotate the reverse side of the certificate of naturalization or citizenship with an endorsement along the following lines:

Name, date and place of birth, lost U.S. citizenship on (date of expatriating act, not date of approval of CLN) under INA 349(a) (insert section of law by/insert description of expatriating act). A certificate of loss of U.S. nationality was

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approved on day/month/year.

- (2) CA/OCS/ACS will mark the naturalization certificate or certificate of citizenship "VOID" across the face of the document and it will be sent with a copy of the approved Form DS-4083, Certificate of Loss of Nationality of the United States, to the U.S. Citizenship and Immigration Services (USCIS) at the following address:

USCIS Records Operations Branch
Douglas Development Corp. Bldg. – 4th Floor
111 Massachusetts Avenue, NW
Washington, DC 20529

If the expatriate furnishes the document to a post at a later date, the post should take the action described above and transmit the voided naturalization certificate or certificate of citizenship to USCIS under cover of a memo explaining that (name, date and place of birth, expatriated himself or herself on day/month/year under INA 349(a) (insert section of law)) and a Certificate of Loss of Nationality was approved on day/month/year. If the applicant wishes to retain either the CRBA or a certificate of nationality/citizenship in order to establish citizenship of a child born prior to the expatriation, the post should take the necessary action to document the child as a U.S. citizen. The PIERS record would reflect the previous issuance of the CRBA and of a U.S. passport for the parent prior to the expatriation if the family does not have the necessary evidence to document the child at the time of the expatriation.

7 FAM Exhibit 1221 LOSS-OF-NATIONALITY FLOW CHART

(CT:CON-527; 08-26-2014)

The following chart summarizes procedures to be followed in developing loss-of-nationality cases:

Acquisition of Foreign Nationality – No Intent to Relinquish U.S. Nationality INA 349(a)(1) INA (8 U.S.C. 1481(a)(1)); Section 401(a) NA		
If ...	Then ...	You ...
You become aware a citizen/noncitizen national acquired foreign nationality And the individual does not assert intent was to relinquish	The administrative presumption of intention to retain U.S. nationality applies.	Prepare Consular Officer Attestation of Non-Loss, 7 FAM Exhibit 1223. Enter case in ACS system and send attestation

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nationality or engage in other conduct inconsistent with intent to retain U.S. nationality		to Passport Records for filing attached to Form DS-11, Application for a U.S. Passport, Form DS-82, Application for a Passport by Mail, or Form DS-4085, Application for Additional Visa Pages or Other Passport Service.
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Acquisition of Foreign Nationality – Stated Intent to Relinquish U.S. Nationality

INA 349(a)(1) INA (8 U.S.C. 1481(a)(1)); Section 401(a) NA

If ...	Then ...	You ...
You become aware a citizen acquired foreign nationality And, the citizen asserts or advises you in response to your question that the intent was to relinquish U.S. citizenship	The administrative presumption of intention to retain U.S. nationality is inapplicable. And, it is necessary to develop the case and assess voluntariness and intent.	Provide the consular letter 7 FAM Exhibit 1224, Form DS-4079, Questionnaire: Information for Determining Possible Loss of U.S. Citizenship, and on-line brochure Advice About Possible Loss of U.S. Citizenship and Dual Nationality, and arrange to interview the citizen. Follow procedures and substantive criteria below (7 FAM 1220 and in particular 7 FAM 1224) on case development.

Making a Declaration/Oath of Allegiance to a Foreign State – No Intent to Relinquish U.S. Nationality

INA 349(a)(2) INA (8 U.S.C. 1481(a)(2)); Section 401(b) NA

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If ...	Then ...	You ...
You become aware a citizen made a declaration/oath of allegiance to a foreign state And, the citizen does not assert that the intent was to relinquish U.S. citizenship.	The administrative presumption of intention to retain U.S. nationality applies.	Prepare Consular Officer Attestation of Non-Loss, 7 FAM Exhibit 1223. Enter case in ACS system and send attestation to Passport Records for filing attached to Form DS-11, Application for a U.S. Passport, Form DS-82, Application for a Passport by Mail, or Form DS-4085, Application for Additional Visa Pages, or Other Passport Service.
Making a Declaration/Oath of Allegiance to a Foreign State – Stated Intent to Relinquish U.S. Nationality INA 349(a)(2) INA (8 U.S.C. 1481(a)(2)); Section 401(b) NA		
If ...	Then ...	You ...
You become aware a citizen made a declaration/oath of allegiance to a foreign state And, the citizen asserts or advises you, in response to your question, that the intent was to relinquish U.S. citizenship	Administrative presumption of intention to retain U.S. nationality is inapplicable. And, it is necessary to develop the case and assess voluntariness and intent.	Provide the consular letter 7 FAM Exhibit 1224, Form DS-4079: Questionnaire - Information for Determining Possible Loss of U.S. Citizenship and on-line brochure Possible Loss of U.S. Citizenship and Dual Nationality, and arrange to interview the citizen. Follow procedures and

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		substantive criteria in 7 FAM 1220 and in particular 7 FAM 1224 on case development.
Entering, or Serving in, the Armed Forces of a Foreign State if (A) Such Armed Forces Are Engaged in Hostilities Against the United States, or (B) Such Persons Serve as a Commissioned or Noncommissioned Officer of a State Engaged in Hostilities Against the United States INA 349(a)(3) (8 U.S.C. 1481(a)(3)); Section 401(c) NA		
If ...	Then ...	You ...
You become aware that a U.S. citizen has taken this action.	Administrative presumption of intention to retain U.S. nationality is inapplicable. And, it is necessary to develop the case and assess voluntariness and intent.	Provide the consular letter 7 FAM Exhibit 1224, Form DS-4079, Questionnaire: Information for Determining Possible Loss of U.S. Citizenship and on-line brochure Possible Loss of U.S. Citizenship and Foreign Military Service, and arrange to interview the citizen. Follow procedures in 7 FAM 1270 on case development. Send the case to CA/OCS/ACS for decision.
Entering, or Serving in, the Armed Forces of a Foreign State as a Commissioned or Noncommissioned Officer of a State Not Engaged in Hostilities Against the United States- No Intent to Relinquish U.S. Nationality INA 349(a)(3) INA as originally enacted; Section 401(c) NA		
If ...	Then ...	You ...
You become aware that a U.S. citizen has taken this action NOTE: Serving in a foreign armed forces below the rank of commissioned or	Administrative presumption of intention to retain U.S. nationality applies.	Prepare Consular Officer Attestation of Non-Loss, 7 FAM Exhibit 1223. Enter case in ACS system and send attestation

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noncommissioned officer, where the State is not engaged in hostilities against the United States, is NOT/NOT an expatriating act, and there is no need to conduct any inquiry or prepare any documentation.		to Passport Records for filing attached to Form DS-11 Application for a U.S. Passport, DS-82 Application for a Passport by Mail, or DS-4085, Application For Additional Visa Pages or other Passport Service.
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Accepting a Nonpolicy-Level Position in a Foreign State - No Intent to Relinquish U.S. Nationality

INA 349(a)(4) INA; Section 401(d) NA

If ...	Then ...	You ...
You become aware that a U.S. citizen has taken this action and is either a dual national of the state of employment or has taken an oath or affirmation in connection with the position.	Administrative presumption of intention to retain U.S. nationality applies.	Prepare Consular Officer Attestation of Non-Loss, 7 FAM Exhibit 1223. Enter case in ACS system and send attestation to Passport Records for filing attached to Form DS-11, Application for a U.S. Passport, Form DS-82, Application for a Passport by Mail, or, Form DS-4085, Application for Additional Visa Pages or other Passport Service.

Accepting a Policy Level Position in a Foreign State

INA 349(a)(4) INA; Section 401(d) NA

If ...	Then ...	You ...
You become aware that a U.S. citizen has taken this action and is either a dual national of the state of employment or has taken	Administrative presumption of intention to retain U.S. nationality is inapplicable.	Provide the consular letter 7 FAM Exhibit 1224, Form DS-4079, Questionnaire:

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an oath or affirmation in connection with the position.	And, it is necessary to develop the case and assess voluntariness and intent.	Information for Determining Possible Loss of U.S. Citizenship and on-line brochure Advice About Possible Loss of U.S. Citizenship and Seeking or Obtaining Public Office in a Foreign State and arrange to interview the citizen. Follow procedures below on case development. See 7 FAM 1280. Send the case to CA/OCS/ACS for decision following CA/OCS/L concurrence.
Entering, or Serving in, the Armed Forces of a Foreign State as a Commissioned or Noncommissioned Officer of a State Not Engaged in Hostilities Against the United States – Stated Intent to Relinquish U.S. Nationality		
INA 349(a)(3) INA as originally enacted; Section 401(c) NA		
If ...	Then ...	You ...
You become aware that a U.S. citizen has taken this action and states that his or her intent is to relinquish citizenship	Administrative presumption of intention to retain U.S. nationality is inapplicable. And, it is necessary to develop the case and assess voluntariness and intent.	Provide the consular letter 7 FAM Exhibit 1224, Form DS-4079, Questionnaire: Information for Determining Possible Loss of U.S. Citizenship and on-line brochure Advice

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		About Possible Loss of U.S. Citizenship and Service in a Foreign Military and arrange to interview the citizen. Follow procedures and substantive criteria in 7 FAM 1220 and in particular 7 FAM 1224 on case development. Send the case to CA/OCS/ACS for decision following CA/OCS/L concurrence.
Accepting a Nonpolicy-Level Position in a Foreign State – Stated Intent to Relinquish U.S. Nationality		
INA 349(a)(4) INA; Section 401(d) NA		
If...	Then ...	You ...
You become aware that a U.S. citizen has taken this action and states that his or her intent is to relinquish citizenship	Administrative presumption of intention to retain U.S. nationality is inapplicable. And, it is necessary to develop the case and assess voluntariness and intent.	Provide the consular letter 7 FAM Exhibit 1224, Form DS-4079, Questionnaire: Information for Determining Possible Loss of U.S. Citizenship and on-line brochure Advice About Possible Loss of U.S. Citizenship and Seeking or

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		Obtaining Public Office in a Foreign State and arrange to interview the citizen. Follow procedures and substantive criteria in 7 FAM 1220 and in particular 7 FAM 1224 on case development. Send the case to CA/OCS/ACS for decision following CA/OCS/L concurrence.
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Making a Formal Renunciation of Nationality Before a Diplomatic or Consular Officer of the United States in a Foreign State in a Form Prescribed by the Secretary of State

INA 349(a)(5) INA; Section 401(f) NA

If ...	Then ...	You ...
A citizen approaches the embassy or consulate to renounce U.S. citizenship.	Administrative presumption of intention to retain U.S. nationality is inapplicable. And, it is necessary to develop the case and assess voluntariness and intent.	Follow procedures in 7 FAM 1260 on Renunciation of Citizenship; Prepare CLN following guidelines below. Enter name in CLASS as a Reason Code Q – Questionable Claim to U.S. Citizenship; Send the case to CA/OCS/ACS for

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		decision.
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7 FAM Exhibit 1223
**A CONSULAR OFFICER ATTESTATION IN NON-
LOSS CASE WHERE ADMINISTRATIVE
PRESUMPTION APPLIES**

(CT:CON-527; 08-26-2014)

U.S. (Embassy, Consulate General, Consulate) at
City, Country
Subscribed and Sworn:

I, (NAME OF CONSULAR OFFICER) have reviewed the U.S. citizenship status of
(name, date and place of birth).

I have noted that this person was:

Naturalized in a foreign state (INA 349(a)(1)); or

Took an oath of allegiance to a foreign state (INA 349(a)(2)); or

Served in the armed services of a foreign state as a commissioned or
noncommissioned officer of a foreign state, not engaged in hostilities against the
United States (INA 349(a)(3)); or

Accepted nonpolicy-level employment with a foreign government and is either a
dual national of the state of employment or has taken an oath or affirmation in
connection with the position (INA 349(a)(4)).

But have applied the Department of State's administrative presumption (22 CFR
50.40) that it was not his or her intent to relinquish U.S. citizenship. Accordingly,
I have determined that this person may be documented as a U.S. citizen.

Consular Officer's Signature

Typed Name of Officer

Title

Post

Date

Seal

7 FAM Exhibit 1224
**A SAMPLE CONSULAR LETTER ON POSSIBLE LOSS
OF NATIONALITY**

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(CT:CON-527; 08-26-2014)

U.S. Embassy/Consulate City, Country

Date

Name

Address

City, Country Postal Code

Dear (Name):

It has come to our attention that on (date) you may have (describe expatriating act). By performing this act you may have lost your U.S. nationality under Section 349(a) of the Immigration and Nationality Act of 1952 (INA), as amended (8 U.S.C. 1481(a)). INA 349(a) lists certain acts that result in loss of U.S. nationality if performed voluntarily and with the intent to lose U.S. nationality. You may lose U.S. nationality only if you performed the potentially expatriating act with the intention of relinquishing United States citizenship.

Our primary purpose in writing is to learn from you whether you performed the expatriating act with the intention of relinquishing U.S. nationality. Please assist us by completing the enclosed Form DS-4079, Questionnaire: Information for Determining Possible Loss of U.S. Citizenship. Although it is presumed that you performed the act voluntarily, we also want to know if you believe you were subject to coercion, duress, or undue influence, and, if so, how did such coercion, duress, or undue influence manifest itself.

Please fill out the enclosed questionnaire and return it in the envelope that we have provided. We urge you to complete the questionnaire carefully and thoughtfully and to closely review your answers. Once we receive the questionnaire from you, we will be in touch with you to arrange a personal interview in person or by phone.

If you wish to discuss this matter with a consular officer before completing this form, we would encourage you to do so and request that you please call (number) to arrange an appointment with a member of our consular staff.

Further if you wish to consult with counsel prior to completing the questionnaire, we would encourage you to do so as well.

Sincerely,

Signature of Consular Officer

Typed Name of Consular Officer

Title of Consular Officer

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Enclosures:

1. Relevant law.
2. Form DS-4079.

7 FAM Exhibit 1225
**A SAMPLE CONSULAR OFFICER OPINION IN NON-
LOSS CASE IN WHICH CITIZEN ASSERTS
RELINQUISHMENT AND ADMINISTRATIVE
PRESUMPTION NO LONGER APPLIES, THOUGH
RELINQUISHMENT IS NOT SUPPORTED BY A
PREPONDERANCE OF THE EVIDENCE**

(CT:CON-527; 08-26-2014)

U.S. (Embassy, Consulate General, Consulate) at
City, Country

I have reviewed the U.S. citizenship status of (name, date and place of birth).

I have noted that this person was **[delete non-applicable categories]**:

Naturalized in a foreign state (INA 349(a)(1)); or

Took an oath of allegiance to a foreign state (INA 349(a)(2)); or

Served in the armed services of a foreign state as a commissioned or noncommissioned officer of a foreign state, not engaged in hostilities against the United States (INA 349(a)(3)); or

Accepted non-policy-level employment with a foreign government or political subdivision thereof and is either a dual national of the state of employment or has taken an oath or affirmation of allegiance in connection with the position (INA 349(a)(4)).

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I have not applied the Department of State's administrative presumption (22 CFR 50.40) that it was not the individual's intent to relinquish U.S. citizenship because the individual has firmly asserted that he or she performed the act specified above voluntarily and with the intent to relinquish citizenship. Accordingly, I have fully developed the record and documented the case in accordance with 7 FAM 1224 and 7 FAM 1225. I have found that [insert name]'s conduct subsequent to the commission of the statutory act of expatriation cited above has been inconsistent with [insert name]'s assertion that the act was committed voluntarily with the intent to relinquish U.S. citizenship. In particular, [cite pertinent facts and analysis in detail, per 7 FAM 1224 and 1225]. I conclude that the preponderance of the evidence does NOT support relinquishment of citizenship.

Drafter:

Cleared:

Enclosures:

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7 FAM Exhibit 1226
A SAMPLE CONSULAR OFFICER OPINION IN LOSS
CASE IN WHICH CITIZEN ASSERTS
RELINQUISHMENT, WHICH IS SUPPORTED BY A
PREPONDERANCE OF THE EVIDENCE.

(CT:CON-527; 08-26-2014)

Embassy of the United States of America

City of X, Country of Z

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MEMORANDUM

November 15, 2007

TO: Department of State (CA/OCS/ACS)

FROM: AmEmbassy Z, CONS/ACS

TAGS: CPAS

SUBJECT: CITIZENSHIP: Loss of Nationality: John Q. Public

REF: 7 FAM 1200

"UNCLASSIFIED

[month dd, yyyy]

M E M O R A N D U M

To: Department of State (CA/OCS/ACS)

From: [Post] ([officer's title/office symbol] [drafter's first initial, last name])

example: ConGen Rosslyn Vice Consul MDrafter

CPAS: [Subject name – LAST NAME, first name, middle name]

Subject: Relinquishment of U.S. Nationality
Section 349(a) (X) [sections 1-4] of the INA

Attached for the Department's decision is a Certificate of Loss of Nationality (CLN) prepared for [full name] born on [month dd, yyyy in city and country place of birth].

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[Subject name] is a National of the United States and also holds dual/triple nationality with country X [and country Y if applicable.]

Mr./Ms. Subject Name unequivocally asserted that the [expatriating act] was voluntarily done with the intent to relinquish U.S. nationality on [month dd, yyyy] and thereby expatriated himself/herself under Section 349(a)(X) [1-4] [mark correct section] of the Immigration and Nationality Act (INA), as amended.

[Strike section if not applicable]

His/her Certificate of Naturalization is attached herewith for transmission to the Department of Homeland Security for cancellation upon approval of the CLN.

Consular Officer's opinion:

[Outline in detail an explanation of the facts and analysis supporting recommendation of loss of citizenship, per 7 FAM 1224 and 1225.]

[Insert name] appeared to understand the irrevocable nature of relinquishment of U.S. nationality when he/she performed the expatriating act, based upon [insert basis for statement]. Subject indicated to the consular officer that he/she had time to reflect fully on the implications associated with relinquishing of his/her U.S. citizenship before and during commission of the expatriating act. [Include the following statement to the extent accurate:] Subject confirmed to the consular officer that since the date of [expatriating act], subject has acted in every way as if he/she were no longer a U.S. citizen and has not applied for or received any benefit from the U.S. government as a U.S. citizen. I have found [insert name]'s conduct subsequent to the commission of the statutory act of expatriation cited above to be consistent with his/her expressed intent to relinquish his/her U.S. citizenship.

Consul recommends that the Department approve the enclosed CLN. [If Consul recommends denial, please use sample consular opinion in 7 FAM Exhibit 1225]

Attachments:

DS-4083 Certificate of Loss of Nationality

DS-4079 Questionnaire

DS-4081 Statement of Understanding

[If applicable] U.S. Certificate of Naturalization

7 FAM Exhibit 1227(A)

A CHECKLIST FOR REVIEW OF CLN PACKET (Relinquishment)

(CT:CON-532; 09-19-2014)

- Is the individual a U.S. citizen?
- Is there proof that an expatriating act occurred?
- Was the act performed voluntarily?
- Was the act performed with the intention of relinquishing U.S. citizenship?
- Was the individual acting under duress, coercion, or undue influence?
- Is the individual a minor?
- Does the administrative record as a whole support the conclusion that the individual more likely than not intended to lose U.S. citizenship?
- Does the relinquisher admit to performing acts subsequent to the potentially expatriating act that may indicate lack of intent (e.g. subsequent travel on the U.S. passport)

CLN Documentation:

- Is the memo complete and in accordance with the current template?
- Did the consular officer sign the DS-4083 Certificate of Loss of Nationality?
- Is the U.S. embassy or consulate seal on the DS-4083 Certificate of Loss of Nationality?
- Does the DS-4083 reflect the correct date of the expatriating act?
- Does the DS-4083 reflect the correct expatriating act and section of law?
- Does the packet reflect the procedures for administrative review of a finding of loss of nationality on the reverse side of Form DS-4083, Certificate of Loss of Nationality of the United States?
- Are there 2 signed, sealed copies of the DS-4083 and supporting documents?
- Is the DS-4079, Questionnaire: Information for Determining Possible Loss of U.S. Citizenship included in the packet?
- Is the Statement of Voluntary Relinquishment on the final page of the DS-4079 signed by the subject?
- Does the packet reflect the correct Statement of Understanding? See Form DS-4081, Statement of Understanding Concerning the Consequences and Ramifications of Relinquishment or Renunciation of U.S. Citizenship.

7 FAM Exhibit 1227(B) A CHECKLIST FOR REVIEW OF CLN PACKET (Renunciation)

(CT:CON-532; 09-19-2014)

Renunciation (see 7 FAM 1260)

- Did the renunciant have sufficient time to consider seriously the act and its consequences?
- Does the packet reflect the correct Oath of Renunciation language? See Form DS-4080, Oath of Renunciation of the Nationality of the United States.
- Does the packet reflect the procedures for administrative review of a finding of loss of nationality on the reverse side of Form DS-4083, Certificate of Loss of Nationality of the United States?
- Did the renunciation take place on consular premises?
- Did the renunciant sign all copies of the oath and statement of understanding?

CLN Documentation:

- If the subject indicates they wish to provide a supplemental statement regarding their reasons for relinquishing, ensure it's attached.
- Attach photocopies of any relevant evidence of the expatriating act.
- (If applicable) Collect the subject's Naturalization certificate.